

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FAMOUS MUSIC CORPORATION, et al.,

Plaintiffs,

v.

ORDER
05-CV-885A(M)

716 ELMWOOD, INC., et al.,

Defendants.

This case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1), on February 27, 2007. On May 18, 2007, plaintiff filed a motion for summary judgment. Defendants filed a response to the motion on June 7, 2007. On June 13, 2007, plaintiffs filed a motion to strike the affidavit of John Allen dated June 4, 2007 and portions of the affidavit of John Pieri, Esq.

On December 28, 2007, Magistrate Judge McCarthy filed a Report and Recommendation, and Order, recommending that the action be dismissed because plaintiffs lack standing. In the alternative, Magistrate Judge McCarthy recommended that plaintiffs' motion for summary judgment be granted on the issue of infringement and that plaintiffs be awarded a minimum of \$200 statutory damages. He also granted plaintiffs' motion to strike.

Defendants filed objections to the Magistrate Judge's decision regarding the motion to strike, on January 29, 2008. Plaintiffs filed objections the Report and Recommendation, on January 31, 2008. Oral argument on the objections was held on March 31, 2008.

Both at oral argument and in their objections, plaintiffs asked that the case be referred back to Magistrate Judge McCarthy for an evidentiary hearing on the standing issue. The Court hereby grants plaintiffs' request and refers the case back to Magistrate Judge McCarthy for an evidentiary hearing on the issue of plaintiffs' standing. Because standing is a threshold issue, the Court denies plaintiffs' motions for summary judgment and to strike affidavits, without prejudice. Plaintiffs may renew such motions, if or when it is determined that they have standing.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: March 31, 2008